

NATIONAL ORGANIZATION FOR RIVER SPORTS

IBLA 94-443

Decided October 9, 1997

Appeal from a decision of the District Manager, Vale District, Oregon, Bureau of Land Management, denying a protest to a Decision Notice and Finding of No Significant Impact Environmental Assessment by the Acting Area Manager, Baker Resource Area, Oregon, Bureau of Land Management, adopting the Final Management Plan for the Wallowa and Grande Ronde Rivers.

Affirmed.

1. Environmental Quality: Environmental Statements--
National Environmental Policy Act of 1969:
Environmental Statements--Wild and Scenic Rivers Act

A river management plan prepared under the Wild and Scenic Rivers Act, 16 U.S.C. § 1274(d)(1) (1994), is not a resource management plan. The Wallowa and Grande Ronde Rivers Final Management Plan is a river management plan prepared pursuant to the Wild and Scenic Rivers Act and, therefore, not a resource management plan.

2. Administrative Procedure: Administrative Review--Appeals:
Jurisdiction--Board of Land Appeals--Federal Land Policy and Management Act of 1976: Land-Use Planning--Rules of Practice: Appeals: Jurisdiction

The first question for examination by the Board upon receipt of an appeal involving a BLM planning decision is whether that decision constituted the approval or amendment of a resource management plan. If so, that decision is not appealable to the Board. If the decision is another type of planning action by BLM, the question is whether that decision contains implementation actions. If so, those implementation actions are appealable to the Board.

3. Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Standing to Appeal--Rules of Practice: Protests--Wild and Scenic Rivers Act

A decision by BLM to implement various alternatives set forth in a river management plan prepared under the Wild and Scenic Rivers Act, 16 U.S.C. § 1274(d)(1) (1994), is not an action proposed to be taken and, therefore, is not properly the subject of a protest under 43 C.F.R. § 4.450-2. According to section 8351.55 of the BLM Manual, appeals related to the implementation of a river management plan are to be filed in accordance with 43 C.F.R. Part 4.

4. Public Lands: Administration--Wild and Scenic Rivers Act

A BLM decision denying a protest of certain actions in a decision to adopt a river management plan for the Wallowa and Grande Ronde Rivers will be affirmed where BLM has articulated a reasoned analysis, adequately considered all relevant factors, including the impact to the environment, and otherwise comported with the Wild and Scenic Rivers Act and other applicable Federal statutes, and there has been no showing of compelling reasons for modification or reversal.

APPEARANCES: John H. Garren, Regional Representative, National Organization for River Sports, Portland, Oregon, for the National Organization for River Sports; Donald P. Lawton, Esq., Assistant Regional Solicitor, and Eric W. Nagle, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On April 12, 1994, the District Manager, Vale District, Oregon, Bureau of Land Management (BLM or the Bureau), issued a Decision denying a protest filed by the National Organization for River Sports (NORS) of a December 15, 1993, Decision Notice and Finding of No Significant Impact Environmental Assessment (DN/FONSI) by the Acting Area Manager, Baker Resource Area, Oregon, BLM, adopting a Final Management Plan (FMP) for the Wallowa and Grande Ronde Rivers. 1/ The NORS filed an appeal.

This case involves a 90-mile-long river system, composed of two rivers (Wallowa and Grande Ronde), that traverses BLM and Forest Service lands

1/ The environmental assessment (EA) for the plan was incorporated in Chapter 7 of the plan. (FMP at 120-78.)

and runs from Minam, Oregon, across the Oregon/Washington border, to Heller Bar, Washington. That system may be divided into three segments. The principal segment is a 43.8-mile section of the Grande Ronde River, which Congress designated on October 28, 1988, pursuant to section 102 of the Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Omnibus Act), 102 Stat. 2782, 2784, 16 U.S.C. § 1274(a)(77) (1994), as part of the national wild and scenic rivers system. ^{2/} This part of the Grande Ronde River (hereinafter, the Grande Ronde Wild and Scenic River Segment) runs from Rondowa, Oregon, where the Walla River joins the Grande Ronde to the Oregon/ Washington border.

Upstream is a 10-mile section of the Wallowa River from its confluence with the Minam River at Minam, Oregon, to where it enters the Grande Ronde River (hereinafter, the Wallowa River Segment), at Rondowa, Oregon, which was designated by section 103 of the Omnibus Act, Pub. L. No. 100-557, 102 Stat. 2790 (1988), as a potential addition to the national wild and scenic rivers system. 16 U.S.C. § 1276(105) (1994). Downstream of the Grande Ronde Wild and Scenic River Segment is a 36.2-mile section of the Grande Ronde River from the Oregon/Washington border to its junction with the Snake River at Heller Bar, Washington (hereinafter, the Grande Ronde River Washington Segment). This section of the river bears no Wild and Scenic Rivers Act designation, but it is included in the Washington State (Asotin County) Shoreline Program and, according to the FMP, is under study for wild and scenic river designation.

^{2/} Under section 10 of the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. § 1281(a) (1994), Congress instructed that each component of the wild and scenic rivers system be administered "in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values." These "values" consist of "outstandingly remarkable scenic, recreational, * * * or other similar values." 16 U.S.C. § 1271 (1994). In accordance with section 2(b) of the WSRA, as amended, 16 U.S.C. § 1273(b) (1994), Congress divided the designated section of the Grand Ronde River into the following classes: Recreational—1.5 miles from its confluence with the Wallowa River to the boundary of the Umatilla National Forest, to be administered by the Secretary of Agriculture; Wild—17.4 miles from the boundary of the Umatilla National Forest to the boundary of the Wallowa-Whitman National Forest, to be administered by the Secretary of Agriculture, and 9 miles from the boundary of the Wallowa-Whitman National Forest to Wildcat Creek, to be administered by the Secretary of the Interior; and Recreational—15.9 miles from Wildcat Creek to the Oregon/Washington border, to be administered by the Secretary of the Interior. The case also involves a very short section of the Wenaha River (0.15 miles), adjoining the Grand Ronde River, that was similarly designated by Congress as a wild and scenic river. See 102 Stat. 2789 (1988). It was classified as a recreational river and is subject to the administration of the Forest Service.

In designating part of the Grande Ronde River as a wild and scenic river, Congress directed the Secretaries of Interior and Agriculture to prepare a comprehensive plan for managing that section of the river, in order "to provide for the protection of the river values." The plan was required to address "resource protection, development of lands and facilities, user capacities, and other management practices necessary or desirable to achieve the purposes of this Act." 16 U.S.C. § 1274(d)(1) (1994). The plan was to be prepared, after consultation with state and local governments and the interested public, within 3 fiscal years after the date of designation. Id. Due to this dictate and other management directives, there was agreement among BLM, the Forest Service, the Oregon State Parks and Recreation Department, and the Washington Shoreline Administrator that one management plan for the 90-mile river corridor would be prepared with BLM as the lead agency. (FMP at 2.) 3/

In May 1992, after considerable study and extensive public input, BLM released a "Draft Management Plan/Environmental Assessment" for the rivers. Following distribution of that draft plan and consideration of comments submitted, BLM issued the FMP in December 1993. Incorporated in the FMP on pages 106-112 was the Acting Area Manager's DN/FONSI. 4/ The DN/FONSI established a 45-day period to run from February 1, 1994, through March 17, 1994, during which time protests of the DN/FONSI could be filed with the Vale District Manager, BLM. On January 28, 1994, BLM published a Notice of Availability of the DN/FONSI in the Federal Register which included information about the 45-day protest period. See 54 Fed. Reg. 4095 (Jan. 28, 1994).

The NORS filed a timely protest which was rejected by the Vale District Manager in his April 12, 1994, Decision in which he concluded that BLM had adequately addressed each of the matters raised by NORS in the FMP/EA. The NORS appealed.

In an Order dated June 1, 1997, this Board directed that BLM file a brief responding to certain questions relative to this case. Prior to

3/ The "corridor," which averages 1/2 mile in width, encompasses Federal, state, and private land on either side of the rivers. (FMP at 2.) Private boaters generally "put-in" at the confluence of the Minam and Wallowa Rivers and "take-out" at or near the town of Troy in Oregon or at or near the confluence of the Grand Ronde and Snake Rivers in Washington. Id. at 36.

4/ Also incorporated in the DN/FONSI was a "Decision Notice and Finding of No Significant Impact National Forest Administered Portion of the Grande Ronde Wild and Scenic River Management Plan Forest Plan Amendment," signed by the Deputy Forest Supervisor, Umatilla National Forest, on December 13, 1993, and by the Forest Supervisor, Wallowa-Whitman National Forest, on December 15, 1993. (FMP at 113-19.)

posing the questions, the Board discussed two BLM Manual provisions that seemed to be inconsistent:

In a separate concurrence in Lawrence V. Smart Trust, 129 IBLA 351, 358 (1994), it was concluded that the Final Lower Deschutes River Management Plan was an RMP [resource management plan] and that, as such, it could only be challenged by a protest to the Director, BLM, not by an appeal to the Board. It was noted that, pursuant 43 C.F.R. § 1610.0-5(k) and 43 C.F.R. § 1610.5-2(b), a decision approving an RMP or amendment of an RMP is subject to review only by the Director, BLM, whose decision is final for the Department. The conclusion in the concurrence in Smart was based on a reading of the Board's decision in New Mexico Wilderness Coalition, 129 IBLA 158 (1994), which relied on section 1601.09 of the BLM Manual in concluding:

BLM incorrectly prepared an activity plan for the El Malpais National Conservation Area when a resource management plan was called for. Approval of a resource management plan is considered a major Federal action significantly affecting the quality of the human environment. 43 CFR 1601.0-6. An EIS [environmental impact statement] is required for such action. 42 U.S.C. § 4332 (1988). Appellant's protest of BLM's approval of the GMP [El Malpais National Conservation Area General Management Plan] for want of an EIS was wrongly dismissed.

Id. at 163.

Section 1601.09 of the BLM Manual specifically mentions particular statutes and states that "[a] plan prepared by the Bureau to fulfill a land-use plan requirement or a multiple-use management requirement of these or similar statutes is called a resource management plan" (emphasis added). In New Mexico Wilderness Coalition, the statute establishing the El Malpais National Conservation Area was construed by the Board to be a "similar statute" within the meaning of section 1601.09 of the BLM Manual.

In the concurrence in Smart, it was concluded that because one of the statutes mentioned in section 1601.09 of the BLM Manual was the Wild and Scenic Rivers Act, a plan prepared pursuant to that Act was an RMP.

In a recent Order, Oregon Natural Desert Association, IBLA 94-329 (May 2, 1997) (copy attached), this Board dismissed an appeal of a December 1, 1993, Decision of the District Manager, Burns District Office, BLM, denying a protest of the Final

Donner und Blitzen National Wild and Scenic River Management Plan. In reliance on the Smart concurrence, the Board found that plan to be an RMP, challengeable only by protest to the Director, BLM. Therein, the Board stated that the Board's "jurisdiction extends to individual activity plans and resource management plans only when the latter contains both planning and implementation actions." (Order at 2). The Board found that the appellants had challenged the plan but not "specific decisions implementing a resource management plan." Id.

Although section 1601.09 indicates that a Wild and Scenic Rivers Act management plan is a[n] RMP, and the Board so held in its Order in Oregon Natural Desert Association, the appellants in that case cited a separate provision of the BLM Manual, arguing that it vested jurisdiction in the Board to consider their appeal. The section cited by the appellants is found in a part of the Manual devoted expressly to management of Designated Wild and Scenic Rivers, 8351.5 (Revised), and it states: "Appeals related to implementation of management actions must be filed in accordance with Title 43 Code of Federal Regulations (CFR), Part 4." BLM Manual 8351.55. In the Order, the Board rejected applicability of that section, instead relying on the separate concurrence in Smart, which did not discuss any BLM Manual provisions in 8351.5.

However, we note that section 8351.54B1a of the Manual provides:

River management plans are implementation plans. Additional environmental assessments may be prepared for each implementation plan and in some instances a separate EIS may be required unless it conforms with existing land use plans and NEPA [National Environmental Policy Act] documentation. The environmental analysis may be tiered to the EIS prepared along with the RMP.

(Order at 2-3 (emphasis added; footnote omitted).)

Having pointed out the discrepancy between the BLM Manual provisions, the Board posed the following questions to BLM:

1. Is a river management plan prepared pursuant to the Wild and Scenic Rivers Act, a resource management plan, as indicated in BLM Manual 1601.09, or is it an implementation plan, as stated in BLM Manual 8351.54B1a?
2. Is the FMP at issue in this case a resource management plan, a river management plan prepared pursuant to the Wild and Scenic Rivers Act, or some other type of plan?

3. Does the FMP contain both planning and implementation actions?

4. Does the Board have jurisdiction to consider NORS's appeal in this case?

(Order at 3-4.)

On August 8, 1997, BLM filed a response to our Order. The NORS has filed no further pleadings.

Concerning the first question, BLM asserts that a river management plan prepared pursuant to the WSRA, 16 U.S.C. § 1274(d)(1) (1994), is an implementation or activity plan, not an RMP. The Bureau recognizes the inconsistency in the Manual provisions, but reasons that the specific language of BLM Manual 8351.54B1a should control over the more general language of BLM Manual 1601.09. Under 43 C.F.R. § 1610.1(b), an RMP is to be prepared on a resource area basis unless otherwise directed by the State Director. A river management plan, BLM points out, is very limited in scope, involving only a limited amount of land bordering a river designated under the WSRA.

The Bureau states that its conclusion is consistent with the WSRA, which provides that a river management plan "shall be coordinated with and may be incorporated into resource management planning for adjacent Federal lands." 16 U.S.C. § 1274(d)(1) (1994). It is BLM's position that Congress intended that river management plans not supplant or duplicate RMP's, but that they could exist as components thereof. Thus, according to BLM, a river management plan may be an extension of an RMP and serve a planning function, but it is not an RMP.

The Board's decision in New Mexico Wilderness Coalition, 129 IBLA 158 (1994), BLM contends, is distinguishable and does not control whether WSRA river management plans are RMP's. The statute in question in that case, BLM argues, unlike the WSRA, expressly required the development of separate general management plans. The Bureau also claims that in New Mexico the Board focussed on the language in BLM Manual 1601.09, without considering the more limited definition of RMP in 43 C.F.R. § 1601.0-5(k), which provides that an RMP is "a land use plan as described in the Federal Land Policy and Management Act [FLPMA]." Section 202 of FLPMA, 43 U.S.C. § 1712 (1994), provides authority for development of land use plans. Because that section makes no reference to WSRA, BLM asserts that the regulatory definition of RMP limits it to plans prepared under FLPMA. The Bureau recognizes that such a construction is contrary to BLM Manual provision 1609.09, and that "[w]hile BLM is generally obligated to follow its manual, BLM should not have to do so where the manual conflicts with BLM's regulations." (Response at 2.) 5/

5/ In its response, BLM states that it "is currently considering revisions to the manual to clarify this issue." (Response at 1, n.1.)

The Bureau contends that the Board's case law on the issue is inconsistent. It states that in certain decisions the Board has proceeded to decide appeals of river management plans without any discussion of whether such plans are RMP's, citing National Organization for River Sports, 138 IBLA 358 (1997); National Organization for River Sports, 137 IBLA 396 (1997); and The Steamboaters, 131 IBLA 223 (1994), aff'd, The Steamboaters v. U.S. Forest Service, No. 95-6251-HO (D. Or. Aug. 16, 1996).

On the other hand, it points to Lawrence V. Smart Trust, supra, and the order in Oregon Natural Desert Association, IBLA 94-329, supra, as "holding" that river management plans are RMP's. 6/

Finally, BLM asserts that other decisions of the Board have addressed appeals of river management plans by limiting discussions to specific implementing decisions that were part of those plans, citing Deschutes River Landowners Committee, 136 IBLA 105 (1996), and Deschutes River Public Outfitters, 135 IBLA 233 (1996). The Bureau states that in neither decision did the Board specifically address the issue of whether a river management plan was an RMP, but that in Deschutes River Landowners the Board suggested on page 107, note 3, that it considered the river management plan to be a planning document not subject to appeal until BLM made an implementing decision.

[1] The Board has long recognized the regulatory review distinction between an RMP and an activity plan or implementation decision. Animal Protection Institute of America, 117 IBLA 208, 218 n.4 (1990); The Wilderness Society, 109 IBLA 175, 178 (1989); Wilderness Society, 90 IBLA 221, 224 (1986); Oregon Shores Conservation Coalition, 83 IBLA 1, 2-3 (1984). The regulations provide that an RMP "is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations." 43 C.F.R. § 1601.0-5(k). A decision approving an RMP or amendment of an RMP is subject to review only by the Director, BLM, whose decision is final for the Department. 43 C.F.R. § 1610.5-2(b). However, approval of activity plans or decisions which implement a management plan or amendment are appealable to the Board. 43 C.F.R. § 1610.5-3(b).

There is a clear conflict in the BLM Manual regarding the nature of a river management plan prepared pursuant to the WSRA. On the one hand, BLM Manual 1601.09 states, as follows:

The Bureau Planning System applies to all BLM administered public land. This includes any public land areas subject to acts

6/ Although BLM referred to a "holding" in the Smart case, the statement in question was not a "holding" of this Board. It appeared in a separate concurrence which agreed with the result of the lead opinion affirming the Oregon State Director's decision denying a request to file a late protest of the Final Lower Deschutes River Management Plan, environmental impact statement, and record of decision.

of Congress specifically designating lands for particular uses such as the Wild and Scenic Rivers Act, the Oregon and California Railroad Grant Land Act of 1937, National Trail Systems Act, the Wilderness Act, national recreation acts, and other public land areas subject to acts of Congress. The Bureau Planning System also applies when the only public land interest is a mineral resource. A plan prepared by the Bureau to fulfill a land-use plan requirement or a multiple-use requirement of these or similar statutes is called a resource management plan.

On the other hand, BLM Manual 8351.54B1a, specifically addressing Wild and Scenic Rivers, states: "River management plans are implementation plans." The Bureau contends, regarding that conflict, that the specific should control the general, and that a river management plan prepared pursuant to WSRA is not an RMP.

Prior Board decisions relating to river management plans have, at times, contained language suggesting that river management plans are RMP's; however, we are persuaded that a river management plan is not an RMP (which would require that the procedural requirements of 43 C.F.R. § 1610.5 be followed), rather it is an activity or implementation plan. Accordingly, we hold that the FMP at issue in this appeal is not an RMP. It is a river management plan prepared pursuant to the WSRA.

Despite the fact that the FMP is an implementation or activity plan, it contains both planning components and implementation decisions. The Bureau states that the planning components are intended to "set standards upon which future decisions on site-specific activities will be based." (Response at 4.) Those components, BLM insists, are not appealable. What is appealable, BLM states, are "those parts of river management plans that make decisions to implement specific actions, where no additional BLM decision will issue before the decision in the river plan takes effect." (Response at 4-5.) ^{7/}

The Bureau identifies the "decisions [in the FMP] to implement specific actions," as follows:

1. Closing 42.3 miles of the Grande Ronde River to motor boats, from 1.5 miles below Rondowa to the Oregon/Washington state line. FMP at 61-62.
2. Constructing a visitor contact station and administrative facilities at Minam. FMP at 59.

^{7/} In support, BLM cites 43 C.F.R. § 1610.5-5(b) and the language of BLM Manual, section 8351.55, which provides for appeals to this Board "related to implementation of management actions."

3. Excluding grazing on public lands immediately adjacent to the Grande Ronde from August 1 through April 1. FMP at 57.

4. Mandating use of fire pans and packing out of human waste on the Wallowa River. FMP at 59.

(Response at 4.) Of those four actions, BLM states that only two, the motorboat closure and the fire pan requirement, became effective upon issuance of the FMP; the others required further decisionmaking by BLM.

[2] The first question for examination by this Board when an appeal is filed involving a BLM planning decision is: Does the decision constitute the approval or amendment of an RMP? If so, that decision is not appealable to this Board. ^{8/} If the decision is another type of planning action by BLM, such as a Recreation Management Plan, Habitat Management Plan, Area of Critical Environmental Concern Management Plan, river management plan, etc., the question is whether that decision contains implementation actions. If so, those implementation actions are appealable to the Board. For example, in Wilderness Society, 90 IBLA at 224-25, the Board entertained an appeal from a recreation management plan to the extent it contained a decision opening a new area to off-road vehicles. On the other hand, where an organization challenged a desert tortoise habitat management plan, the Board dismissed the appeal because it found that the management actions identified in the plan were "not the type of specific actions or land-use decisions which are appealable to the Board" because they were not final implementation decisions. California Association of Four Wheel Drive Clubs, Inc., 108 IBLA 140, 142-43 (1989).

In another case, the Board refused to dismiss appeals based on the allegation that the challenged document, a bald eagle habitat management plan, was an RMP. The Board found that it was, in fact, an activity plan.

Nevertheless, the Board dismissed the appeal based on its finding that the appellants did not have standing to appeal because they failed to show how they had been adversely affected by the disputed plan. With regard to each part of the plan that was challenged, additional action was required of BLM. Petroleum Association of Wyoming, 133 IBLA 337, 343-44 (1995).

In this case, the FMP is an activity plan that contains both planning and implementation actions. In its response, BLM argues, however, that, despite the appealability of those implementation actions, NORS fails to show how any implementation action in the FMP adversely affects its interests or the interests of any of its members, and that the appeal should be dismissed on that basis.

^{8/} Because an RMP establishes management policy, its approval is subject only to protest to the Director of BLM, whose decision is final for the Department. 43 C.F.R. § 1610.5-2. In Harold E. Carrasco, 90 IBLA 39 (1985), the Board concluded that the denial of a request to amend an RMP is also within the scope of the regulation providing for protests to the Director of BLM.

While it is true that NORS's objections to the FMP are largely based on NORS's belief that recreational use of the river system will grow dramatically in the future, and that BLM should make planning decisions at this time in anticipation of that growth, this does not mean that NORS has failed to show that it or its members are adversely affected by BLM's present action. For that reason, we decline to dismiss the appeal.

[3] Before we turn to the merits of NORS's contentions, we will address another procedural aspect of this case. The Notice of Availability of the DN/FONSI published in the Federal Register stated: "For the Bureau of Land Management, this decision is subject to protest pursuant to [B]ureau of Land Management regulations 43 CFR part 4. The 45 day protest period begins on February 1, 1994 and ends on March 17, 1994. Notices of Protest must meet the requirement of 43 CFR 4.21." 59 Fed. Reg. 4085 (Jan. 28, 1994).

The regulations in 43 C.F.R. Part 4 contain Department hearings and appeals procedures. They are not BLM regulations. Nevertheless, they do contain a regulation styled "Protests." That regulation provides that protests are objections raised by any person to any action proposed to be taken by BLM. 43 C.F.R. § 4.450-2. The DN/FONSI in this case was not an action proposed to be taken by BLM. As the Acting Area Manager stated in the DN/FONSI, "it is my decision to implement" a specific alternative set forth in the FMP for each of the three river segments. (FMP at 107.) Under the regulations, as a "decision of an officer of the Bureau of Land Management," the DN/FONSI should have been appealable directly to this Board. See 43 C.F.R. § 4.410. That is the procedure contemplated by section 8351.55 of the BLM Manual, titled "Appeals of WSR River Management Decisions," which provides that "[a]ppeals related to implementation of management actions must be filed in accordance with Title 43 Code of Federal Regulations (CFR), Part 4." In addition, BLM's statement in the Notice of Availability that protests were to "meet the requirement of 43 C.F.R. § 4.21" was inaccurate. That regulation relates to appeals to this Board not to protests filed with BLM.

Turning now to NORS's contentions, it claims that BLM failed to correctly determine the carrying capacity of the rivers, that use allocation between commercial and noncommercial users should have been established, and that motorized boating use should be banned.

[4] We have previously held that a BLM decision implementing a river management plan prepared pursuant to the WSRA will be affirmed where BLM has articulated a reasoned analysis, adequately considered all relevant factors including the impact to the environment, and otherwise comported with the WSRA and other applicable Federal statutes, and there has been no showing of compelling reasons for modification or reversal. Deschutes River Public Outfitters, 135 IBLA at 244. For the reasons stated below, we conclude that BLM articulated a reasoned analysis for the decisions in the FMP that have been challenged by NORS, and there has been no showing by NORS of any compelling reason to modify or reverse BLM's actions.

Regarding carrying capacity, BLM conducted a campsite survey during the 1989-91 float seasons and concluded in an inventory completed in 1991 that the river system had a single day campsite capacity greater than the highest total use of that system for a 5-month float season. See FMP at 36-37; Decision at 1. "For this reason the BLM has not felt that it was necessary to make an immediate determination of the actual capacity of the river." (Answer at 4.)

Although NORS admits that the number of campsites is a consideration in assessing the carrying capacity of a river, it argues that it is only one consideration. However, it did not specifically identify other considerations or provide any basis for concluding that BLM's reliance on campsite capacity was improper. As BLM points out, it established management standards in the FMP, which it will use to determine when the volume of use on the river system begins to impact adversely on the outstandingly remarkable values of the system, and the procedures it will follow to limit those impacts.

The NORS objects to the fact that BLM did not establish in the FMP a use allocation between commercial and noncommercial use of the river system. It has failed, however, to show the necessity for such an allocation. A table of the annual float season visitor use for the river system during the period 1987-91 demonstrates that only about 10 to 15 percent of visitor use was by commercial operators. If, in the future, it becomes necessary to impose an allocation system between commercial and noncommercial users, BLM stated in the FMP, such a system would be developed "through extensive public involvement with a consensus solution between affected users that maintains the quality of the recreational experience." (FMP at 71.)

The NORS also contends that the entire river system should have been closed to motorized boating. In the FMP, BLM allowed motorized boating on the Wallowa River Segment and Grand Ronde River Washington Segment. (FMP at 59, 68.) However, for the Wallowa River Segment, which is under study for designation as a wild and scenic river, it deferred making any decision regarding what specific restrictions it would impose on the "timing, size, and number of trips" by motorized craft pending the results of monitoring.

Id. at 59. It closed the Grand Ronde Wild and Scenic River Segment to motorized boating use from a point 1.5 miles below Rondowa to the Oregon/Washington border, thus encompassing all of the designated "wild" sections and the downstream "recreational" section of the river. Id. at 62. Within the upstream "recreational" section, motorized use was permitted subject to limitations on the timing, size, and number of trips, such limitations to be determined through monitoring. Id. The Bureau also provided that the continuation of such use in that section would hinge on the results of monitoring. Id.

Motorized boating use is "generally permitted in wild, scenic and recreational river areas." 47 Fed. Reg. 39459 (Sept. 7, 1982). 9/ It

9/ Departmental guidelines for managing the national wild and scenic rivers system were published in the Federal Register on Sept. 7, 1982.

necessarily follows that such use would be allowed on rivers under consideration for potential addition to the national wild and scenic rivers system, as well as on rivers carrying no designation. That use is, however, subject to restrictions "necessary to protect the values for which the river area was designated." Id. The NORS has not shown that BLM failed to protect the values of the Grand Ronde Wild and Scenic River Segment or that BLM's decision to allow motorized use on certain entire segments or portions of segments, subject to monitoring, is in error. At best, NORS prefers a different approach to the allowance of motorized use. That will not suffice to demonstrate error. 10/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

James L. Burski
Administrative Judge

10/ The NORS also alleged that BLM should have prepared an environmental impact statement for the FMP. It has not, however, established any error in BLM's finding of no significant impact. That argument is rejected.